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Attorneys for Defendant
Bernard "Skip" Whalen Area Local #71

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KENNETH G. FLOYD,
Plaintiff,

v.

BERNARD "SKIP" WHALEN AREA
LOCAL, AMERICAN POSTAL WORKER
UNION LOCAL #71,

Defendant.

CASE NO.:

CV 07

5993

NOTICE OF REMOVAL OF THE
BERNARD "SKIP" WHALEN AREA
LOCAL, AMERICAN POSTAL
WORKERS UNION LOCAL #71

The Bernard "Skip" Whalen Area Local, American Postal Workers Union Local #71 (Local Union) files this Notice of Removal of Civil Action No. 107CV094120 filed in the Superior Court, County of Santa Clara, California, and in support thereof states the grounds for removal as follows:

1. A summons was received by an officer of the Local Union on or about October 28, 2007.
2. The Plaintiff was a former president and member of the Local Union. In his two causes of action, the Plaintiff alleges that the Local Union owes him \$27,704.04 for expenses he incurred

1 while he was president of the Local Union. The Plaintiff also alleges that the Local Union owes him
2 \$6,544.44 for unused sick leave he accumulated while president of the Local Union.

3 3. The Local Union and the American Postal Workers Union, AFL-CIO (APWU) are
4 labor organizations within the meaning of the Labor Management Relations Act (LMRA), 29 U.S.C.
5 § 152(5) (2007). The Local Union is chartered by the APWU. The APWU and its chartered local
6 unions represent employees of the United States Postal Service and the private sector mail industry.

7 4. The conduct of the Local Union is governed by the constitution and by-laws of the
8 APWU (APWU Constitution), and the constitution and by-laws of the Local Union (Local
9 Constitution) which must be consistent with the APWU Constitution. The expenditure of Local
10 Union funds and the compensation of Local Union officers is generally determined by the Local
11 Constitution. To the extent that the Local's Constitution is silent on an issue or contradicts the
12 APWU Constitution, the APWU Constitution applies.

13 5. Article 15 of the APWU Constitution states:

14 The following shall constitute offenses, the commission of which shall subject any
15 officer or member of the American Postal Workers Union, or of any subordinate
body of APWU, or a subordinate body itself, to disciplinary action as set forth herein:

16 SEC. 1. (a) Violating any provision of the Constitution or Bylaws of the APWU or
17 of a subordinate body, or failure to perform duties or functions specified or required
therein.

18 6. In claiming that the Local Union failed to reimburse him for Local Union expenses that
19 he incurred while president of the Local Union, and in claiming that the Local Union denied him
20 compensation for unused accumulated sick leave while president of the Local Union, the Plaintiff is
21 making a federal question claim because he is claiming that the Local Union breached both the
22 Local Constitution and the APWU Constitution.

23 7. A cause of action by a union member to enforce a union constitution is considered to be
24 a suit to enforce a contract between labor organizations which is governed exclusively by federal
25 law. See Wooddell v. Intl. Bhd. of Elec. Workers, 502 U.S. 93, 98-99 (1991).

26 8. This Court has jurisdiction over the claims that the Plaintiff asserts against the Local
27 Union under Section 301(a) of the LMRA, 29 U.S.C. § 185, and under Section 1208(b) of the Postal
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1 Reorganization Act (PRA), 39 U.S.C. § 1208(b).¹ Federal district courts have jurisdiction over any
2 cause of action that concerns a violation of a contract between unions, including a union
3 constitution. Section 301(a) of the LMRA states:

4 Suits for violation of contracts between an employer and a labor organization
5 representing employees in an industry affecting commerce as defined by this chapter,
6 or between any such labor organizations, may be brought in any district court of the United
States having jurisdiction of the parties, without respect to the amount in controversy or
without regard to the citizenship of the parties.

7 Section 1208(b) of the PRA states:

8 Suits for violation of contracts between the Postal Service and a labor organization
9 representing Postal Service employees, or between any such labor organizations, may be
10 brought in any district court of the United States having jurisdiction of the parties, without
respect to the amount in controversy.

11 9. Accordingly, this Court has original jurisdiction over Plaintiff's causes of action
12 against the Local Union and removal of the actions to this Court is proper pursuant to 28 U.S.C. §
13 1441(b).

14 10. True copies of all pleadings filed in this case are attached hereto as Exhibit A.

15 The Bernard "Skip" Whalen Area Local, American Postal Workers Union Local #71 hereby
16 removes Civil Action No. 107CV094120 filed in the Superior Court, County of Santa Clara,
17 California, to this Court.

18
19 Dated: November 27, 2007

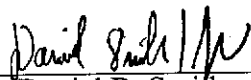
Respectfully submitted,

20 ALTSHULER BERZON LLP

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22 By: 
23 Jonathan Weissglass

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26 ¹ Although all public employees are expressly exempted from the Labor Management Relations
27 Act (LMRA), 29 U.S.C. § 152 (2), courts have held that case law developed under Section 301 of
28 the LMRA, 29 U.S.C. § 185, is equally applicable to actions brought by Postal Service employees
under Section 1208(b). Johnson v. United States Postal Service, 756 F.2d 1461, 1465 (9th Cir.
1985)("Because [39 U.S.C. Section 1208] is essentially identical to Section 301 of the National
Labor Relations Act, Bowen v. United States Postal Service, 459 U.S. 212 232 n.1 (1983), we may
properly rely on Section 301 cases for guidance.").

O'DONNELL, SCHWARTZ & ANDERSON, P.C.

By: 
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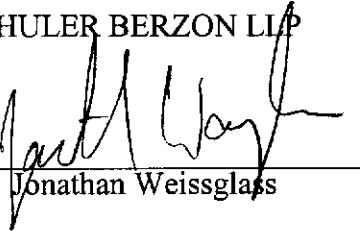
CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: November 27, 2007

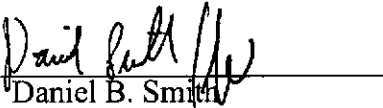
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